IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

CORAM:

**THE HONOURABLE MR.JUSTICE P.D.DINAKARAN**
**and**
**THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN**

W.P.No.1869 of 2004

Kanchipuram Silk Handloom Weavers'
Co-operative Marketing Society Ltd.
320, Gandhi Road
Kanchipuram-631 501 by its
Special Officer Sri.V.Ramamoorthy .. Petitioner

versus

1. The Commissioner of Income-tax
   Chennai-VIII
   121, Uttamar Gandhi Road
   Chennai-600 034.

2. The Addl. Commissioner of Income-tax
   Vellore Range
   Karpagam Buildings
   Officers Line
   Vellore-632 004.

3. The Income-tax Officer, Ward I
   Income-tax Buildings, M.M.Avenue
   Kancheepuram-631 501. .. Respondents

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PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records pertaining to the to the impugned order dated 15.12.2003 in C.No.C.VIII/22(33)/2002-03 on the file of the first respondent confirming the order of the second respondent dated 25.6.2002 in C.R.No.23(11)/VLR/2001-02 and quash the same.

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For petitioner : Mr. S. Karthigayen for Mr.G.Jayachandran

For respondents : Mrs.Pushya Sitaraman Senior Standing Counsel for Income Tax

ORDER

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

This writ petition is filed against the order of the Commissioner of Income Tax, Chennai-8, seeking a prayer to quash the order dated 15.12.2003 in C.No.C.VIII/22(33)/2002-03, confirming the order of the Additional Commissioner of Income Tax, Vellore Range.

2. The assessee/writ petitioner is a Cooperative Society. It is engaged in the business of marketing silk sarees produced by its members. It provides credit facilities, provides godowns on hire to the members, showroom facilities etc. It is stated that in the year 1991, the Income Tax Department took the view that the petitioner was not entitled to have the benefit of exemption under Section 80P(2) of the Income Tax Act.

3. The assessment was completed, denying the exemption under Section 80P(2). The successive appeals to the appellate authorities resulted in a rejection. Thereafter, the assessee preferred an application for reference to this Court under Section 256(2). This Court directed the Tribunal to decide the case and it is stated that the same is pending. It is stated that for the assessment year 1986-87 and 1987-88, the third respondent, the assessing authority, completed the assessment. Apart from demanding the tax, he also levied interest under Section 217 of the Act in view of the default committed in payment of advance tax. Interest under Section 139(8) was also imposed for the default committed in not filing Returns within the time permitted under Section 139(1) of the Act.

4. It is stated that the petitioner availed the benefit of the Kar Vivad Samadhan Scheme. It also filed an application before the second respondent and sought for waiver of the entire interest levied under Section 139(8) and 217 of the Act. By its application dated 12.4.1999, the petitioner pleaded that the petitioner was suffering huge financial strain and that there were no fixed assets. They also impressed on the fact that the liability itself could be met only from the working capital on loan borrowed from the Kancheepuram Central Cooperative Bank Ltd.

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The utilisation of the cash credit for purposes other than granting of loan to the members would only bring the society to a grinding halt. In the circumstances, they prayed for waiver of interest for the period 1986-87 to 1987-88. The Additional Commissioner of Income Tax, second respondent herein, took the view that the delay in completion of the assessment was attributable to the petitioner and that a perusal of the latest balance sheet for the year 2000-01 showed the balance at Rs.5,92,762/- and investment in shares and in bank. Hence, it could not be viewed that there is difficulty in payment of interest. However, taking note of the fact that the assessment was completed after one year from the date of filing and the notice under Section 143(2), interest attributable to the period 26.4.1996 to 5.11.1998 was waived.

5. Aggrieved by this, the petitioner preferred a petition for review and once again impressed on the fact that due to the severe financial crisis, the petitioner met the Chairman of the Central Board of Direct Taxes, under whose advise, the petitioner went in for the Kar Vivad Samadhan Scheme, that they had no fixed assets; the society collected meagre interest from the members for providing credit facilities. It also pointed out that the share capital held with other cooperative institutions could not be realised and that it was under a statutory obligation to invest their share capital in the Cooperative Bank in which the Society was having full financial transactions. It further contended that the Society had to invest 20% of its profits in Reserve Funds, according to the Tamil Nadu Cooperative Societies' Rules. Even the balance sheet for the year ended 31.3.2002 showed a shortfall or deficit in the commitment towards reserve fund investments. The Employees' Provident Fund investment belonged to the Employees' Society. The petitioner is a mere custodian of such funds on behalf of the employees. Considering this, the petitioner listed out its liabilities and the loss incurred as on 30.6.2002 and prayed that the case be considered sympathetically.

6. By order dated 5.8.2002, the second respondent rejected the petition on the ground that there was no review power. Hence, the petitioner appealed to the Commissioner to the Income Tax, the first respondent herein, wherein, it reiterated its contentions as stated above and prayed for waiver, which would work to the benefit of the society and save it from financial disaster; thereby, extend protection to 1000 weavers' families.

7. By order dated 15.12.2003, the first respondent herein considered the claim and stated that under Rule 117-A, the request for waiver or reduction of interest could be considered in the following circumstances, namely,

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(i) where the return of income is furnished by a person who has been treated under Section 163 as an agent of non-resident and is assessed in respect of latter's income;
(ii) where the return of income is furnished by an assessee whose only source of income during the relevant previous year is a share in the income of an unregistered firm which has been assessed on its total income in respect of that previous year under clause (b) of section 183;
(iii) where the return of income of a deceased individual is furnished by his legal representative and the legal representative satisfies the (Assessing Officer) that he had sufficient cause for not furnishing such return within time;

(iv) where the return of income has been furnished in pursuance of a notice issued under Section 148;
(v) any case in which the assessee produces evidence to the satisfaction of the (Assessing Officer) that he was prevented by sufficient cause from furnishing the return within time.

8. So too, under Rule 40, the request for waiver or reduction of interest could be considered in the following circumstances, namely,
(i) when the relevant assessment is completed more than one year after the submission of the return, the delay in assessment not being attributable to the assessee;
(ii) where a person is under Section 163 treated as an agent of another person and is assessed upon the latter's income;
(iii) where the assessee has income from an unregistered firm assessed under the provisions of clause (b) of section 183;
(iv) where the previous year is the financial year or any year ending about the close of the financial year and large profits are made after the 1st March (or the 15th March in cases where the proviso to section 211 applies), in circumstances which could not be foreseen;
(v) any case in which the (Deputy) Commissioner considers that the circumstances are such that a reduction or waiver of the interest payable under Section 215 or Section 217 is justified.

9. The first respondent commented that the petitioner had no other convincing explanation for non-compliance of notice for the assessment years 1986-87 and 1987-88. He pointed out that the plea of the petitioner centered only on financial hardship. He viewed that the case of the assessee/petitioner did not fall for consideration under the conditions listed in the rules. He further viewed that the second respondent had already considered the waiver as regards the portion of interest in terms of Rule 40 (5). In the absence of any exceptional circumstances shown and

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there being no valid reason, quoting the decisions reported in **214 ITR 364 (PRATAP SINGH CHANDRA SINGH Vs. CIT)** and **234 ITR 227 (SANTHOSH ELECTRICALS Vs. ITO)**, the first respondent, rejected the prayer for waiver and thereby confirmed the order of the second respondent.

10. Aggrieved of this, the petitioner has come by way of this writ petition.

11. Learned counsel appearing for the petitioner submitted that the authorities below failed to consider the difficulties faced by the petitioner and that their financial position was in a very bad shape. He also pointed out that with great difficulty, the petitioner had paid huge liability of Rs.11,76,662/- under the Kar Vivad Samadhan Scheme. He also pointed out that the petitioner was not a habitual defaulter. In the circumstances, he prayed that the order of the first respondent confirming the order of the second respondent be set aside.

12. He also pointed out that the petitioner was directed to deposit 50% of the interest amount under order dated 5.2.2004 in W.P.M.P.No.2056 of 2004. Learned counsel appearing for the petitioner submitted that the petitioner filed its return of income on receipt of a notice under Section 142(1) declaring the total income as nil and claiming the entire income as deductible under Section 80P(2)(a) of the Income Tax Act. Due to the difficult financial circumstances, the petitioner had to seek for installment payment. Rule 117A(5) empowers the authorities to consider the plea of waiver chargeable under Section 139(8) and 217 where an assessee produces evidence to the satisfaction of the assessing officer that he was prevented by sufficient cause in not furnishing the return within time. Rule 40 also provides under Sub Rule (5) that the Commissioner may consider the circumstances which would warrant a reduction or waiver of interest payable under Section 215 of the Act. The assessee submits that considering the financial crunch and the issue on liability remaining uncertain at that point of time, the authorities ought to have considered the prayer favourably. He pointed out that for the assessment years 1982-83 and 1983-84, the prayer for waiver was considered to grant a reduction of fifty per cent only. He further pointed out that the petitioner had satisfactorily explained the doubt of the Additional Commissioner as regards the investment in shares and in banks as well as the balance available. Considering the explanation offered, the first respondent erred in overlooking these circumstances which certainly fall for consideration under Rule 40(5) as well as Rule 117-A(5).

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13. Learned senior standing counsel appearing for the respondents, however, submitted that considering the fact that the authorities below had considered the prayer and rejected the same, the question of taking a different view in this matter does not arise.

14. It is a fairly settled proposition of law that granting waiver is a matter of discretion, yet, the exercise of discretion under the Rules referred to above is conditional upon the satisfaction of the authorities concerned as to the existence of the appropriate circumstances alone. Hence, the conclusion as to whether the circumstances exist or do not exist will ordinarily be a finding of fact. In exceptional circumstances, the High Court would exercise its writ jurisdiction to find out whether the view of the authorities below is sustainable and supported by any evidence or based upon the view of facts which could never be reasonably entertained. The jurisdiction to interfere is a very restrictive one that High Court will not interfere or reverse the finding of the authorities if the conclusion for rejection of waiver plea or reduction of the liability on interest is found to be a possible conclusion drawn from facts.

15. In the case on hand, the petitioner has projected the reasons for granting waiver, takking a considerate view. The first respondent herein has stated that there is no whisper of any facts and circumstances which compelled the inaction on the part of the assessee. The perusal of the order shows that the first respondent has not considered the various circumstances projected in its petition and the explanations offered on the question of its financial difficulties and hardships faced. In the circumstances, we accept the plea of the petitioner herein to the extent that the matter requires re-consideration at the hands of the first respondent. Considering the detailed petition made by the petitioner herein, in fitness of things, it is necessary that the Commissioner considers the facts projected and pass orders in accordance with law.

16. Consequently, we set aside the order of the first respondent and remit the matter back to the first respondent for a de novo consideration and pass orders in accordance with law within a period of three months from the date of receipt of a copy of this order, after affording reasonable opportunity to the petitioner herein to substantiate its claim.

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The writ petition is disposed of accordingly. Consequently, W.P.M.P.No.2056 of 2004 is closed.
Ksv

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:
1. The Commissioner of Income-tax
Chennai-VIII
121, Uttamar Gandhi Road
Chennai-600 034.

2. The Addl. Commissioner of Income-tax
Vellore Range
Karpagam Buildings
Officers Line
Vellore-632 004.

3. The Income-tax Officer, Ward I
Income-tax Buildings, M.M.Avenue
Kancheepuram-631 501.

+ one cc to Mrs. Pushya Sitaraman, SCGSC SR NO. 15298
+ one cc to Mr. S.Karthikeyan, Advocate sr no. 15123

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